

**35 U.S.C. § 101 Rejection**

Claims 31-36 are rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter.

Claims 31-36 have been amended. Accordingly, Applicants respectfully request the withdrawal of the rejection of claims 31-36.

**35 U.S.C. § 103 Rejection**

Claims 1-13, 21-27 and 31-36 are rejected under 35 U.S.C. §103(a) as being unpatentable over Williams, et al., U.S. Patent No. 6,957,269 ("Williams") in view of Lee, et al., U.S. Patent No. 6,957,269 ("Lee").

Claim 1, as amended, recites

A method comprising:

identifying a receive capability associated with one or more priority levels of Ethernet traffic for a network device by scanning a plurality of receive buffers to determine whether content in the buffers has reached or exceeded a predetermined threshold;

if the content in the buffer has reached or exceeded a predetermined threshold, identifying a flow control priority level that is oversubscribed based on monitoring one or more of a class-of-service, a type-of-service, a quality-of-service, and a time sensitivity of the Ethernet traffic, wherein the flow control priority level denotes an identified priority level above and/or below which the network device is able to receive Ethernet traffic; and

generating a control message including the flow control priority level, the flow control priority level to cause throttling of Ethernet traffic from network devices receiving the control message.

(emphasis added)

Applicants respectfully disagree with the Examiner's characterization of the references and the pending claims. Applicants maintain their previous arguments and provide the following additional remarks.

Williams discloses a "network device that controls the communication of data frames between stations receives data frames having different levels of priority. The